IN THE HIGH COURT OF JUDICATURE AT BOMBAY

T & I. J.

NOTICE OF MOTION NO.50 OF 2005
IN
PROBATE PETITION NO.140 OF 2005

Mr.Yazdi Darab Chichgur & Anr. .. Petitioners

Vs.

Mrs.Jeroo Rustom Engineer & Anr .. Respondents

WITH

NOTICE OF MOTION NO.51 OF 2005
IN
PETITION NO.141 OF 2005

Mr.Dhanju Darab Chichgur .. Petitioner

Vs.

Mrs.Jeroo Rustom Engineer & Anr .. Respondents

WITH

NOTICE OF MOTION NO.67 OF 2005
IN
SUIT NO.36 OF 2005
IN
PETITION NO.140 OF 2004

Mr.Yazdi Darab Chichgur & Anr. .. Petitioners

Vs.

Mrs.Jeroo Rustom Engineer & Anr .. Respondents

WITH

NOTICE OF MOTION NO.68 OF 2005
IN
SUIT NO.34 OF 2005

IN
PETITION NO.141 OF 2004

Mr.Dhanju Darab Chichgur .. Petitioner

Vs.

Mrs.Jeroo Rustom Engineer & Anr .. Respondents

Mr.M.Vasudeo i/b M/s.M & M Legal Ventures

Mr.C.S.Kapadia with Mr.G.S.Bhatt for respondent no.3

Mr.G.Desai with Ms.S.V.Thakkar & Milli V.Thakkar for the respondents

CORAM : S.U.KAMDAR, J
DATED : 12TH AUGUST, 2005

P.C.:

1. In the present motions, I have heard the parties at some length and after hearing the parties the consent order is worked out as under:

2. All the fixed deposits with the companies and the banks which were either in the sole name of the deceased or jointly with any of the parties to the present proceedings and all amounts lying in the accounts of the banks. Some of the details of the same are given in schedule 1 to the present petition as well as in affidavit in reply filed to

the Notice of Motion No.50 of 2005 being Ex.D and Exh.E-1 thereto are directed to be deposited in this court. All the banks and companies with whom the said amount is lying will be intimated to encash the necessary Fixed Deposits and deposit with the office of the Prothonotary and Senior Master within 4 weeks from today. Similarly, amount lying with various banks in any savings and/or other account of the deceased either singly or jointly shall also be deposited with the Prothonotary & Senior Master, High Court, Mumbai. In any event if any of the amount mentioned in the said schedule is either encashed or not available, company to state by letter to all the parties about the status of such deposit or the amount lying in the account of the bank. On such letter being intimated by the bank parties are at liberty to apply for further orders limited to the extent of such intimation by the companies or banks.

3. The learned counsel for the respondents states that the amount which has been withdrawn by them subsequent to the death of the deceased from the fixed deposits will be deposited by him in this

court within 4 weeks from today. Prothonotray and Senior Master, High Court, Bombay is directed invest all the amount deposited by the said companies/ banks and the respondents in the present proceedings with the nationalised bank in Fixed Deposit initially for one year and the same be renewed from time to time till further orders passed by this court.

4. In so far as flat no.5 situated at Dikush respondent no.3 states that he is in possession of the same alongwith the family members. He further states that he has no objection if the Court Receiver High Court Bombay is appointed as Receiver with further direction that Receiver to appoint Respondent no.3 as an agent of the court receiver however, without payment of security and or royalty charges in respect of the said flat till hearing and final disposal of the petition. Accordingly, Court Receiver is appointed with the aforesaid directions. Court Receiver is further directed to take inventory of the articles and belongings of the deceased lying in the said flat and copy of the inventory be furnished to all the parties and the

parties are at liberty to apply for necessary orders in respect of the said articles which are lying in the said flat and are indicated in the said inventory report of the Court Receiver. Respondent no.3 states that there is pending litigation in the Small Causes Court at Bombay and he is being impleaded as party respondent to the said suit because of his occupation of the said flat. He will be entitled to prosecute the same. Decree of eviction if passed then the same will not be executed without prior permission of this court.

5. Respondent no.3 hereby also gives an undertaking to this court that in an event of his failing in this petition and/or his right of tenant not being recognised by any court he will pay necessary compensation for user of the flat as may be determined by the court in accordance with the law. It is clarified that proceedings which is pending in Small Causes Court shall proceed. If decree is passed, Receiver be intimated about the same by the party. All the Notice of Motions are disposed of with the aforesaid liberty.